

**REMARKS**

In response to the various paragraphs of the Office Action, Applicants offer the following remarks:

(1) Missing Claims 31-35. The Office Action states that the first Preliminary Amendment received on December 7, 2001 did not include claims 31-35 (which have since been cancelled). As requested, Applicants have now submitted a complete copy of the first Preliminary Amendment that includes missing claims 31-35.

(2) Format. Pursuant to the Examiner's request, Applicants have now shown pending claims 36-41 in a proper format for a Reissue application. Claims 36-41 are shown entirely underlined.

(3) Concurrent Proceedings. The Examiner is already aware of the parent Reissue application and Divisional Reissue applications that are concurrently proceeding through the Patent Office with this Divisional Reissue application.

(4)-(5) Declaration. A Substitute Declaration, updating the errors corrected is enclosed, as requested by the Office. The Substitute Declaration is a copy of the Substitute Declaration submitted in the copending (parent) Reissue application, no. 09/588,364.

(6) Surrender of Patent. The original patent was surrendered to the Office in the copending Reissue application, no. 09/588,364, on November 22, 2002. As the original patent was lost, Applicants have submitted a communication in the copending (parent) Reissue application, no. 09/588,364, stating that the original patent had been lost (see enclosed copy of Communication, dated December 20, 2002).

(7)-(8) Double Patenting. The Office has rejected claims 36-41 of this application because they claim the same invention as that of claims 1-12, 36-37 of copending Reissue

application, no. 09/588,364. Applicants respectfully submit that claims 36-41 in this application include features not found in claims 1-12, 36 and 37 of the copending Reissue application and, therefore, cannot be the same invention for the reasons set forth below.

**Claim 36** (this application) includes at least the following feature:

- the barcode pattern is **readable by a pick-up...**

**Claim 37** (this application) depends from claim 36 (this application).

**Claim 38** (this application) includes at least the following feature:

- the barcode pattern is **readable by a pick-up...**

**Claim 39** (this application) depends from claim 38 (this application).

**Claim 40** (this application) includes the following feature:

- **reading data as a barcode pattern...by the pick-up...**

**Claim 41** (this application) includes the following feature:

- the **pick-up device is used for reading data...**

Claims 1-12, 36 and 37 of the copending Reissue application do not include any of the above features indicated in bold, found in claims 36-41 of this application and, therefore, are not identical inventions, for the following reasons:

**Claim 1** of the copending Reissue application includes at least two features not found in any one of claims 36-41 of this application, namely "marking position detection means" and "position information output means." In addition, claims 36-41 includes the above features indicated in bold, each related to a "**pick-up for reading data.**" Claim 1, however, does not include such feature, namely a pick-up for reading data. Claim 1,

therefore, does not have identical subject matter with any one of claims 36-41 of this application.

Claims 2-11 of the copending Reissue application depend from claim 1 and include additional features that limit claim 1. Consequently, claims 2-11 cannot be the same invention as any one of claims 36-41 of this application for at least the same reasons set forth above.

Claim 12 of the copending Reissue application includes "forming pits...". None of claims 36-41 of this application includes "forming pits". Furthermore, claim 12 does not include the feature of "**a pick-up for reading data**", which is recited in each of claims 36-41 of this application. Claim 12 is, thus, not the "same invention" as any one of claims 36-41 of this application.

Claims 36 and 37 of the copending Reissue application each includes "the barcode pattern is formed on a track...". None of claims 36-41 of this application includes a barcode pattern formed on a track. Furthermore, neither of claims 36 and 37 of the copending Reissue application includes the feature of "**a pick-up for reading data**", which is recited in each of claims 36-41 of this application. Thus, claims 36 and 37 of the copending Reissue application cannot be the "same invention" as any one of claims 36-41 of this application.

Accordingly, Applicants respectfully submit that claims 36-41 of this application are not the same inventions (do not contain the same subject matter) as claims 1-12, 36 and 37 of the copending Reissue application and, therefore, are not subject to a rejection in view of double patenting based on U.S.C. 101.

**In the event that the Examiner rejects claims 36-41 in view of double patenting based on the obviousness kind (non-statutory), Applicants terminally**

**disclaim a patent granted based on this application, and have thus enclosed a terminal disclaimer.**

(9)-(10) Section 103 Rejection. The Office rejected claims 36-41 as being obvious in view of Kato and Ikeda. Applicants submit that this rejection is overcome for the reasons set forth below.

Claim 36 includes the following features:

- the information recording layer has a **track of a spiral shape**, a data recording area and a **barcode pattern are formed on the track**, and the barcode pattern is readable by a pick-up for reading data recorded on the information recording layer.

As recited, the invention includes a **spiral track and a barcode pattern formed on the spiral track**. In addition, the barcode pattern is readable by a pick-up (device) that reads data recorded on an information recording layer. In other words, the pick up device can read the barcode pattern and can also read the data recorded on the information recording layer.

The Office Action admits that Kato does **not teach a barcode pattern** formed on an information recording layer readable by a pick-up device. In addition, Kato does **not teach a spiral track**.

Applicants respectfully submit that Ikeda also does not teach or suggest a **barcode pattern formed on an information recording layer having a spiral track** that is readable by a pick-up device. The barcode-like pattern, shown in FIG. 1 of Ikeda, is formed on an area without a spiral track. Generally, a spiral track is formed as a continuous track on a disk. FIG. 1 of Ikeda shows a disk having two regions, an address region 1b and a

data region 1a. The data area of Ikeda is shown separated from the address area. Applicants submit, therefore, that Ikeda does not have a spiral track on the disk.

In addition, Ikeda forms the barcode-like pattern in the address area of the disk, and not in the data area of the disk. Ikeda does not suggest, therefore, a barcode-like pattern formed on a spiral track having information recorded therein. The cited references, therefore, do not disclose or suggest the features of claim 36.

Although not the same, claim 38 includes features similar to claim 36 and, therefore, is not subject to rejection in view of the cited references for the same reasons set forth for claim 36. Claims 37 and 39 depend, respectively, from claims 36 and 38 and, therefore, are not subject to rejection in view of the cited references for at least the same reasons set forth for claim 36.

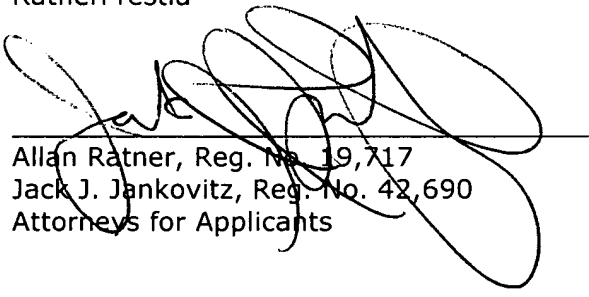
Reconsideration of claims 36-41 is respectfully requested.

Certificate Under 37 CFR 3.73 (b)

Applicants have now enclosed a better copy of an originally submitted Certificate Under 37 CFR 3.73 (b) in this Application. The title of the signer in the originally submitted Certificate is not clear. In the enclosed copy, the title is more clear. The stamp sets forth his name and title as "General Manager IP Development Center, Authorized Signing Officer". Page 1 of the Certificate sets forth that "The undersigned is empowered to act on behalf of the assignee." Applicants request that the Office substitute the enclosed copy for the originally submitted copy.

Respectfully Submitted,

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Enclosures: Substitute Declaration  
Communication dated December 20, 2002  
Terminal Disclaimer  
Copy of Certificate Under 37 CFR 3.73 (b)  
Preliminary Amendment filed on December 7, 2001

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